

P 103-056442-01 218A-50206-1C DJC/ced  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ELIJAH CHISOLM,

ECF CASE

Plaintiff(s),

08 CV 4694 (RMB)

-against-

ANSWER TO AMENDED  
COMPLAINT AND  
CROSS-CLAIM

PRODUCERS RICE MILL, INC., RAFI  
INDUSTRIES d/b/a CHICAGO SWEETENERS, INC.,  
CSX CORPORATION and CSX TRANSPORTATION,  
INC.,

Trial by Jury Demanded

Defendant(s).

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Defendant PRODUCERS RICE MILL, INC., by its attorneys ROBIN, HARRIS, KING  
& FODERA, answering the amended complaint of the plaintiff herein:

ANSWER TO JURISDICTION

FIRST: Denies any knowledge or information sufficient to form a belief as to  
each and every allegation contained in paragraphs designated "FIRST", "SECOND", "FIFTH"  
through "TENTH" inclusive, "FOURTEENTH", "SEVENTEENTH" through "THIRTY  
SECOND" inclusive of the amended complaint.

SECOND: Denies upon information and belief each and every allegation contained in  
paragraphs designated "ELEVENTH" and "THIRTY SEVENTH" of the amended complaint.

THIRD: Denies any knowledge or information sufficient to form a belief as to each  
and every allegation contained in paragraphs designated "TWELFTH", "FIFTEENTH" and  
"THIRTY SIXTH" of the amended complaint and refers all questions of law to this Honorable  
Court.

FOURTH: Denies each and every allegation contained in paragraphs designated “SIXTEENTH” and “THIRTY THIRD” through “THIRTY FIFTH” inclusive, of the amended complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,  
IT IS ALLEGED UPON INFORMATION AND BELIEF:

FIFTH: That the injuries and damages, if any, alleged to have been sustained by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,  
IT IS ALLEGED UPON INFORMATION AND BELIEF:

SIXTH: That if the defendant is held liable in this case, its liability is limited pursuant to Article 16 of the C.P.L.R. to its equitable share determined with the relative culpability of each person or party causing or contributing to the total liability of non-economic loss.

SEVENTH: That the defendant herein is not liable for more than its proportionate share of the damages pursuant to Article 16 of the C.P.L.R. and that plaintiff has not joined all potentially liable parties.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,  
IT IS ALLEGED UPON INFORMATION AND BELIEF:

EIGHTH: Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiff for medical care, dental care, custodial care of rehabilitative services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules.

NINTH: If any damages are recoverable against this said defendant, the amount of such damages shall be diminished by the amount of the funds which plaintiff has or shall receive from such collateral source.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,  
IT IS ALLEGED UPON INFORMATION AND BELIEF:**

TENTH: Any damages allegedly sustained by plaintiff were caused or contributed to in whole or in part by the plaintiff's failure to mitigate said damages, and if any judgment is recovered against this defendant, said judgment should be apportioned and reduced by the percentage of plaintiff's failure to mitigate said damages.

**AS AND FOR A CROSS-CLAIM AGAINST  
CO-DEFENDANTS RAFI INDUSTRIES d/b/a CHICAGO SWEETENERS,  
INC., CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
THIS DEFENDANT PRODUCERS RICE MILL, INC. ALLEGES:**

ELEVENTH: That if the plaintiff sustained the injuries alleged in the plaintiff's amended complaint in the manner therein alleged, all of which has been denied by this defendant Producers Rice Mill, Inc. through any fault other than the fault of the plaintiff, then such injuries and damages were caused by the active, affirmative and primary negligence of the co-defendants Rafi Industries d/b/a Chicago Sweeteners, Inc., CSX Corporation and CSX Transportation, Inc.

TWELFTH: That by reason of the foregoing this defendant Producers Rice Mill, Inc. is or will be entitled to have judgment over and against the co-defendants Rafi Industries d/b/a Chicago Sweeteners, Inc., CSX Corporation and CSX Transportation, Inc. in whole or in part as to any sum awarded to the plaintiff against this defendant Producers Rice Mill, Inc.

WHEREFORE, this defendant Producers Rice Mill, Inc. demands judgment dismissing the amended complaint of the plaintiff together with costs and disbursements, or in the event that plaintiff recovers any sum against this defendant Producers Rice Mill, Inc., then this defendant Producers Rice Mill, Inc. demands judgment over and against the co-defendants Rafi Industries d/b/a Chicago Sweeteners, Inc., CSX Corporation and CSX Transportation, Inc. as to any amount awarded to the plaintiff, together with the costs and disbursements of the defense of this action.

Dated: New York, New York  
September 03, 2008

Yours etc.,

BY: \_\_\_\_\_ s/ \_\_\_\_\_

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